

#### AGP-44. SERVICE CONTRACT ACT OF 1965, AS AMENDED (LONG FORM)

This Contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq., hereafter referred to as the "Act"), and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder (29 CFR Part 4).

(a) Compensation.

- (1) Each service employee employed in the performance of this Contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Contract.
- (2) Conformance.
  - (A) If there is such a wage determination attached to this Contract, any class of service employees which is not listed therein and which is to be employed under this Contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), shall be classified by the Contractor, so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this Article.
  - (B) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Institute no later than 30 days after such unlisted class of employees performs any contract work. The Institute shall review the proposed action and submit the proposed action, together with its recommendation and all pertinent information including the position of the Contractor and the employees, to the Contracting Officer. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with his/her recommendation and all pertinent information, including the position of the Institute, the Contractor and the employees, through NASA Headquarters (Code NR-31) to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.
  - (C) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Institute and the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
  - (D) (i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

- (ii) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the Contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Institute of the action taken but the other procedures in paragraph (a)(3) of this Article need not be followed.
  - (iii) No employee engaged in performing work on this Contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (E) The wage rate and fringe benefits finally determined pursuant to paragraphs (a)(2) and (3) of this Article shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this Contract.
- (F) Upon discovery of failure to comply with paragraphs (a)(2) through (8) of this Article, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.
- (3) Adjustment.
- (A) Adjustment of Compensation. If the term of this Contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this Contract shall be subject to adjustment after one year and not less often than once every two years, under wage determinations issued by the Wage and Hour Division.
- (B) The parties agree that this Contract shall be amended, at the discretion of JPL, to incorporate any applicable Wage Determination issued by the Department of Labor pursuant to this AGP. The parties further agree that upon such a modification, the parties will negotiate an equitable adjustment to compensate the Contractor for actual additional costs caused by the applicability of the Act and the Wage Determination, retroactive to the effective date the Wage Determination is made applicable per the terms of the modification incorporating it. The Contractor warrants that the prices set forth in the Contract do not include any allowance for anticipated increases in the Contractor's rates of pay for any of the job classifications listed in the Contract due to anticipated Wage Determinations or revisions or additions to the applicable Wage Determination required for this Contract under the Service Contract Act of 1965.
- (b) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or conformed thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash, in accordance with the applicable rules set forth in 29 CFR Part 4, Subpart D.
- (c) Minimum Wage. In the absence of a minimum wage attachment for this Contract, neither the Contractor nor any subcontractor under this Contract shall pay any person performing work under the Contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this Article shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

- (d) Successor Contracts. If this Contract succeeds a contract subject to the Act, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this Contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this Contract shall pay any service employee performing any of the Contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this Contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative (i) determines as provided in 29 CFR 4.11 that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or (ii) finds after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the Contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 [1973]. In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (e) Notification to Employees. The Contractor and any subcontractor under this Contract shall notify each service employee commencing work on this Contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this Contract, or shall post the wage determination attached to this Contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this Contract.
- (f) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this Contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR 1925.
- (g) Records and Employee Interviews.
- (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work, records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.
- (A) Name and address and Social Security Number of each employee.
- (B) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
- (C) The number of daily and weekly hours so worked by each employee.
- (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

- (E) A record of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this Contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative, under the terms of paragraph (a) of this Article. A copy of the report required by paragraph (a)(2)(B) of this Article will fulfill this requirement..
  - (F) Any list of the predecessor contractor's employees which had been furnished to the Contractor pursuant to paragraph (m) of this Article.
- (2) The Contractor shall also make available a copy of this Contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
  - (3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this Contract, and in the case of failure to produce such records, the Institute, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.
  - (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (h) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
  - (i) Withholding of Payment and Termination of Contract. The Institute shall withhold or cause to be withheld from the Contractor under this or any other Contract with the Institute such sums as the Department of Labor requests or such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Institute may, after authorization or by direction of the Contracting Officer (as authorized or directed by the Department of Labor) and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this Article relating to the Act may be grounds for termination of the right to proceed with the Contract work. In such event, the Institute may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
  - (j) Subcontractors. The Contractor agrees to insert this Article in all subcontracts subject to the Act. The term "Contractor," as used in this Article in any subcontract, shall be deemed to refer to the subcontractor.
  - (k) Service Employee. As used in this Article, the term "service employee" means any person engaged in the performance of this Contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.
  - (l) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Contractor or any subcontractor under the Contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the Contract is being performed, the Contractor shall report this fact to the Institute together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the Contract, and a copy of the collective bargaining agreement. This report shall be made upon commencing performance of the Contract, in the case of collective bargaining agreements effective at such time, and, in the case of agreements or provisions or amendments thereof effective at a later time during the period of Contract performance, such agreements shall be reported promptly after negotiation thereof.

- (m) Seniority List. Not less than 10 days prior to completion of any contract being performed at a JPL facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent Contractor shall furnish to the Institute a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Institute shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (n) Regulations Incorporated by Reference. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4, and are hereby incorporated by reference in this Contract.
- (o) Contractor's Certification.
- (1) By entering into this Contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
  - (2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (p) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (a) through (p) of this Article relating to the Act, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act (prior to its amendment by Public Law 92-473), found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, as amended, in regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
  - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, as amended, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938, as amended, (29 CFR Parts 520, 521, 524 and 525);
  - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (q) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage

determination. The allowable ratio of apprentices to journeymen employed on the Contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to its entire work force under the registered program.

- (r) Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may, if not prohibited by applicable State law, have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and regulations, 29 CFR Part 531; provided, however, that the amount of such credit shall not exceed \$1.34 per hour beginning January 1, 1981. To utilize this proviso:
  - (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
  - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (s) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the "Disputes" Article of this Contract, if any. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this Article include disputes between the Contractor (or any of its subcontractors) and the Institute, the U.S. Department of Labor, or the employees or their representatives.